

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

) CONSENT AGREEMENT AND
) FINAL ORDER

Tyson Fresh Meats, Inc.
(f/k/a IBP, Inc.)

)
) Docket No. EPCRA-07-2003-0096
) Docket No. CERCLA-07-2003-0096

Respondent

)
)
) Docket No. EPCRA-07-2003-0308
) Docket No. CERCLA-07-2003-0308

Facilities located in

)
)
) Docket No. EPCRA-07-2003-0313
) Docket No. CERCLA-07-2003-0313

Columbus Junction, Iowa
Perry, Iowa, and
Holcomb, Kansas

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CONSENT AGREEMENT AND FINAL ORDER

On or about March 31, 2003, pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045, the United States Environmental Protection Agency (Complainant or EPA) issued to IBP, Inc, a Complaint and Notice of Opportunity for Hearing alleging violations of CERCLA and EPCRA at IBP, Inc.'s Columbus Junction, Iowa facility (Docket Nos. EPCRA-07-2003-0096, and No. CERCLA-07-2003-0096) (IBP, Inc. is now known as Tyson Fresh Meats, Inc., and hereafter will be referred to as Respondent or Tyson).

On or about September 8, 2003, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, EPA issued to Respondent a Complaint and Notice of Opportunity for Hearing alleging violations of EPCRA at Respondent's Perry, Iowa facility. On or about September 29, 2003, EPA issued a First Amended Complaint, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA,, 42 U.S.C. § 11045, alleging additional violations of these statutes at Respondent's Perry, Iowa facility (Docket Nos. EPCRA-07-2003-0308, and No. CERCLA-07-2003-0308).

On or about September 29, 2003, EPA issued a Complaint and Notice of Opportunity for Hearing to Respondent Tyson, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, alleging violations of these statutes at Respondent's Holcomb, Kansas facility (Docket Nos. EPCRA-07-2003-0313, and No. CERCLA-07-2003-0313).

The above referenced Complaints (hereafter "Complaints") allege that Respondent violated Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355; and Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302.

The above referenced Complaints propose the penalties set forth below for these violations:

Columbus Junction, Iowa:	\$48,125
Perry, Iowa:	\$27,500
Holcomb, Kansas:	\$41,252

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaints. Respondent neither admits nor denies the factual allegations set forth in the Complaints.

2. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaints.

3. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, Respondent's Columbus Junction, Iowa; Perry, Iowa; and Holcomb, Kansas facilities are each presently in compliance with all requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, and all implementing regulations, 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and all implementing regulations, 40 C.F.R. Part 355.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

6. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this Order may result in commencement of a

civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

7. Although not required by CERCLA, EPCRA or any other federal, state or local law, in settlement of this matter, Respondent agrees to undertake the following environmentally beneficial projects that will benefit the community where Respondent's Columbus Junction, Iowa facility is located in order to assist the community in emergency response actions.

Specifically, Respondent agrees to purchase emergency response equipment:

- a. Six (6) Self-contained breathing apparatuses (SCBA) for the Columbus Junction, Iowa fire department;
- b. One (1) SCBA carbon cylinder for the Columbus Junction, Iowa fire department; and
- c. Two (2) SCBA face pieces for the Columbus Junction, Iowa fire department.

The specific equipment to be purchased has been coordinated with, and approved by, the Columbus Junction, Iowa fire department.

8. Respondent agrees to pay at least \$14,000 by November 15, 2003, to purchase the equipment listed in Paragraph 7, above. No later than December 15, 2003, Respondent agrees to submit copies of invoices or other documentation to EPA to substantiate these expenditures, and the Columbus Junction, Iowa Fire Department's approval of these expenditures. Respondent will also provide documentation to EPA showing receipt by the fire department of the equipment, at which time Respondent's obligations under Paragraph 7, above, shall be satisfied. In the event that Respondent fails to expend \$14,000 by November 15, 2003, to implement these projects, Respondent agrees to pay a stipulated penalty EPA. Respondent shall be liable for a

stipulated penalty of two dollars (\$2) for every one dollar (\$1) under \$14,000 that Respondent fails to expend to implement this project.

9. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This Consent Agreement and Final Order may be executed by EPA upon receipt from Respondent of a telefaxed signature page. Upon its execution, a copy of the executed agreement shall be sent by telefax and certified mail to Respondent.

10. Respondent agrees that the original Consent Agreement and Final Order signed by Respondent shall be transmitted by overnight mail or messenger to Howard C. Bunch, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th St., Kansas City, Kansas 66101. Upon EPA's receipt of the signed original from Respondent, the original signature page signed by Respondent shall be filed with the previously executed copy with the Regional Hearing Clerk.

FINAL ORDER

Pursuant to the provisions of CERCLA, 42 U.S.C. § 9601, and EPCRA, 42 U.S.C. 11001, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Seventy-Three Thousand, Seven Hundred and Seventy Four Dollars, and Thirty Cents (\$73,774.30), within thirty days of entry of this Final Order. Payment shall be by two company checks, as specified below.

2. The first check shall be for \$41,699.65 and shall be made payable to the "United States Treasury" and remitted to:

EPA-Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

3. The second check shall be for \$32,074.65 and shall be made payable to "EPA
Hazardous Substance Superfund" and remitted to:

EPA - Region 7
Attn.: Superfund Accounting
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

4. A copy of each check should be sent to:

Howard C. Bunch, Sr. Assistant Regional Counsel
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

5. Each check shall reference the Docket Nos. of the Complaints.

6. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as
a result of this matter.

7. Respondent shall implement and complete the environmentally beneficial projects set
forth in Paragraph 7 of the Consent Agreement. In the event that Respondent does not complete
the environmentally beneficial projects set forth in Paragraph 7 of the Consent Agreement,

Respondent shall pay stipulated penalties as set forth in Paragraph 8 of the Consent Agreement.

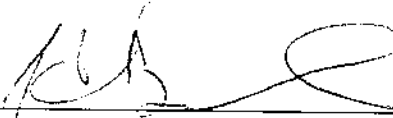
Such stipulated penalties shall be immediately due and payable upon written notice to

Respondent by EPA.

FOR:

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By


Howard C. Bunch
Senior Assistant Regional Counsel

Date

10/23/03

Signatures Continued:

CONSENT AGREEMENT AND FINAL ORDER

Docket Nos. EPCRA-07-2003-0096, CERCLA-07-2003-0096, EPCRA-07-2003-0308,
CERCLA-07-2003-0308, EPCRA-07-2003-0308, CERCLA-07-2003-0308

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FOR:

RESPONDENT:

TYSON FRESH MEATS, INC.

By

Kevin J. Igli
Kevin J. Igli

Title Vice President and Chief Environmental Officer

Date

10/22/03

Signatures Continued:

CONSENT AGREEMENT AND FINAL ORDER

Docket Nos. EPCRA-07-2003-0096, CERCLA-07-2003-0096, EPCRA-07-2003-0308,
CERCLA-07-2003-0308, EPCRA-07-2003-0313, CERCLA-07-2003-0313

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date Oct. 27, 2003

IN THE MATTER OF Tyson Fresh Meats, Inc., (f/k/a IBP, Inc.), Respondent
Docket Nos. EPCRA-07-2003-0096, CERCLA-07-2003-0096, EPCRA-07-2003-0308,
CERCLA-07-2003-0308, EPCRA-07-2003-0313, CERCLA-07-2003-0313

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Howard Bunch
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Kirk R. Marty
Shook, Hardy & Bacon L.L.P.
84 Corporate Woods
10801 Mastin, Suite 1000
Overland Park, Kansas 66210-1671

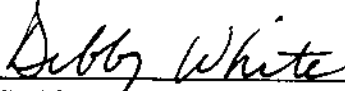
and

Tyson Foods, Inc.
Attn: Jimmy Mardis,
Director, Environmental Compliance
2210 West Oaklawn Drive
Springdale, Arkansas 72762-6999

Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., Mail Code 1900L
Washington, D.C. 20460

Dated: October 29, 2003

 For
Kathy Robinson
Regional Hearing Clerk